APPENDIX A

MEMORANDUM DECISION OF THE SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

v.

GARY DUNCAN.

No. 48573.

Supreme Court of Louisiana.

Feb. 20, 1967.

In re: Gary Duncan applying for writ of certiorari.

The application is denied. No error of law in the ruling complained of.

APPENDIX B

SCOPE OF THE RIGHT TO TRIAL BY JURY OUTSIDE LOUISIANA

The following thirty-eight states guarantee a right to trial by jury equal to or greater than the right secured in federal courts under the Sixth Amendment. In each of these states, a defendant charged with an offense punishable by more than six months imprisonment is entitled to be tried by a twelve man jury, all of whom must concur in the verdict. Compare *Patton v. United States*, 281 U.S. 276 (1930).

Alabama: CONSTITUTION, art. 1, § 6, art. 1, § 11; Amendment XXXVII; ALA. CODE tit. 15, § 227; tit. 13, §§ 126, 327; tit. 7, § 264; tit. 13, §§ 424, 429; tit. 30 § 99(1) (1958), *Baader v. State*, 201 Ala. 76, 77 So. 370 (1917).

Arizona: CONSTITUTION, art. 2, § 24, art. 2, § 23; ARIZ. REV. STAT. ANN. § 21-102 (1956), § 21-103, § 22-301 (Supp. 1966), § 22-402 (1956); ARIZ. R. CRIM. P. 300.

Arkansas: CONSTITUTION, art. 2, § 10, art. 2, § 7; ARK. STAT. ANN. § 43-1901, § 43-2160 (1964).

California: CONSTITUTION, art. 1, § 7; *Ex parte Wong Yon Ting*, 106 Cal. 296, 39 Pac. 627 (1895); CAL. PEN. CODE ANN. § 1140 (1956); *People v. Howard*, 211 Cal. 322, 295 Pac. 333 (1930).

Colorado: CONSTITUTION, art. 2, § 16, art. 2, § 23; (See COLO. REV. STAT. ANN. § 79-15-4, *repealed*, Laws 1964, p. 436, § 73); COLO. REV. STAT. ANN. § 39-7-20.

Connecticut: CONSTITUTION, art. 1, § 8, art. 1, § 19; CONN. GEN. STAT. ANN. § 54-82 (1960), §§ 51-266, 51-273 (Supp. 1966); *State v. Gannon*, 75 Conn. 206, 52 Atl. 727 (1902).

Delaware: CONSTITUTION, art. 1, § 7, art. 1, § 4, art. 4, § 28; DEL. CODE ANN. tit. 10 § 4519 (1953); DEL. SUPER. CT. (CRIM.) R. 23(a)(b), 31 (1953); DEL. CODE ANN. tit. 11, § 2701 (Supp. 1966).

Georgia: CONSTITUTION, § 2-105, § 2-5101; GA. CODE ANN. § 59-707 (1965); *Sullivan v. State*, 29 Ga. App. 377, 115 S.E. 2d 290 (1923).

Hawaii: CONSTITUTION, art. 1, § 11; HAWAII REV. LAWS, § 231-9 (1955).

Idaho: CONSTITUTION, art. 1, § 7; *State v. Jutilla*, 34 Id. 595, 202 Pac. 566 (1921); IDAHO CODE ANN. § 18-113; *State v. Scheminisky*, 31 Id. 504, 508, 174 Pac. 611 (1918).

Illinois: CONSTITUTION, art. 2, § 9, art. 2, § 5; ILL. ANN. STAT. ch. 78, §§ 20, 23 (Smith-Hurd 1966); *People v. Lobb*, 17 Ill. 2d. 287, 161 N.E. 2d 325 (1959).

Indiana: CONSTITUTION, art. 1, § 13; IND. ANN. STAT. § 9-1501, § 9-1811 (1956).

Kansas: CONSTITUTION, Bill of Rights § 10, Bill of Rights § 5; KAN. GEN. STAT. ANN. § 62-1412, § 62-1501 (1964).

Maine: CONSTITUTION, art. 1, § 6; ME. R. CRIM. P. 23(b), 31(a).

Maryland: CONSTITUTION, Declaration of Rights, art. 21, art. 5; Md. Rules P. 743, 758.

Massachusetts: CONSTITUTION, Pt. 1, art. XII, § 13; *Jones v. Robbins*, 74 Mass. 329, 341, 343-45, 347 (1857); MASS. GEN. LAWS ANN. ch. 234, § 26B (Supp. 1966); ch. 234 § 33 (1959); *Commonwealth v. Bellino*, 320 Mass. 635, 71 N.E. 2d 411 (1947).

Michigan: CONSTITUTION, art. 1, § 20, art. 1, § 14; MICH. STAT. ANN. § 27.3936(13), § 28.1192 (1954).

Minnesota: CONSTITUTION, art. 1, § 6, art. 1, § 4; MINN. STAT. § 593.01 (1947).

Mississippi: CONSTITUTION, art. 3, § 26, art. 3 § 31; MISS. CODE ANN. § 1615; (Supp. 1966) §§ 1836, 1202 (1957).

Missouri: CONSTITUTION, art. 1, § 18(a), art. 1, § 22(a); MO. REV. STAT. § 546.390, § 543.250 (1959).

Montana: CONSTITUTION, art. 3, § 16, art. 3, § 23; MONT. REV. CODES ANN. § 94-116 (1964).

Nebraska: CONSTITUTION, art. 3, § 11, art. 3, § 6; NEB. REV. STAT. §§ 18-205, 18-201 (1962); § 29-2022 (1965).

Nevada: CONSTITUTION, art. 1, § 3; *State v. McClear*, 11 Nev. 39 (1876); NEV. REV. STAT. § 175.480 (1963).

New Hampshire: CONSTITUTION, pt. 1, art. 15; *State v. Ray*, 63 N.H. 406 (1885). *Opinion of the Justices*, 41 N.H. 550 (1860).

New Jersey: CONSTITUTION, art. 1, § 10, art. 1, § 9; N.J. STAT. ANN. § 2A:74-1 (1952). *State v. Gibson*, 15 N.J. 384, 105 A. 2d 1 (1959).

New Mexico: CONSTITUTION, art. 2, § 14, art. 2, § 12; N.M. STAT. ANN § 36-12-3, § 36-2-5 (1964).

North Carolina: CONSTITUTION, art. 1, § 13, art. 1, § 19, art. IV, § 27; N.C. GEN. STAT. § 15-177, § 15-177.1, § 7-204, § 7-393 (1953). *State v. Berry*, 190 N.C. 363, 130 S.E. 12 (1925).

North Dakota: CONSTITUTION, art. 1, § 7; N.D. CENT. CODE § 40-18-17 (Supp. 1965), § 33-12-19, § 29-22-14 (1960).

Ohio: CONSTITUTION, art. 1, § 10, art. 1, § 5; OHIO REV. CODE ANN. § 2938.06, § 2945.77 (1964 Baldwin).

Pennsylvania: CONSTITUTION, art. 1, § 9, art. 1, § 6; *Commonwealth v. Widmeyer*, 149 Pa. Super.

91, 26 A. 2d 125 (1942); PA. STAT. ANN. tit. 17, § 1142; *Commonwealth v. Fugmann*, 330 Pa. 4, 28, 198 Atl. 99 (1938).

Rhode Island: CONSTITUTION, art. 1, § 10, art. 1, § 15; R.I. GEN. LAWS ANN. § 9-10-12 (1956).

South Dakota: CONSTITUTION, art. 6, § 7, art. 6, § 6; S.D. CODE § 34.3673 (Supp. 1960).

Tennessee: CONSTITUTION, art. 1, § 9, art. 1, § 6; TENN. CODE ANN. § 40-2504 (Supp. 1966); *Memphis v. Trigally*, 46 Tenn. 382 (1869); *Woods v. State*, 99 Tenn. 182, 41 S.W. 811 (1897).

Vermont: CONSTITUTION, ch. 1, art. 10, ch. 1, art. 12; VT. STAT. ANN. tit. 12, § 1505 (1958).

Washington: CONSTITUTION, art. 1, § 22, art. 1, § 21; WASH. REV. CODE ANN. § 2-36-050; § 3-20-040; § 35-20-090; § 35-20-030; § 10-61-040 (1965).

West Virginia: CONSTITUTION, art. 3, § 14; W. VA. CODE ANN. § 5175[50-18-7] (1961).

Wisconsin: CONSTITUTION, art. 1, § 7, art. 1, § 5; WIS. STAT. ANN. § 957-01, § 62.24, (Supp. 1967); § 959.01 (1958); *Rothbauer v. State*, 22 Wis. 468 (1868).

Wyoming: CONSTITUTION, art. 1, § 10, art. 1, § 9, art. 5, § 22; WYO. STAT. ANN. § 7-427, § 7-409, § 5-130, § 5-123 (1957).

The following five states guarantee a right to trial by jury in all cases in which a jury would be available in federal courts under the Sixth Amendment. A jury of less than twelve men is provided, however, in cases in which the maximum sentence may not exceed one year imprisonment.

Alaska: CONSTITUTION, art. 1, § 11; ALASKA STAT. § 22.15.150, § 22.15.060, § 11.75.030 (1962) (six jurors in District Magistrate Court).

Iowa: CONSTITUTION, art. 1, § 10, art. 1, § 9; IOWA CODE §§ 602.39, 602.15, 687.7 (1966) (six jurors in Municipal Court).

Kentucky: CONSTITUTION, §§ 7, 11, 248; KY. REV. STAT. § 25.010, § 26.010 (Supp. 1966), KY. R. CRIM. P. 9.82 (six jurors in inferior courts).

Oklahoma: CONSTITUTION, art. 2, § 20, art. 2, § 19; OKLA. STAT. tit. 20, § 272, tit. 21, § 10 (1951) (six jurors in County Court). (The verdict in these misdemeanor cases may be rendered by three-fourths of the whole number of jurors).

Virginia: CONSTITUTION, art. 1, § 8, art. 1, § 11; VA. CODE § 19.1-206, § 18.1-9 (1960) (five jurors in misdemeanor cases).

Texas guarantees a right to trial by jury in all cases in which a jury would be available in federal courts under the Sixth Amendment. A jury of six men is provided, however, in the county court in cases in which the punishment may not exceed two years. In the district court, in misdemeanor cases, nine members of the jury may render a verdict. CONSTITUTION, art. 1, § 10, art. 1, § 15, art. 5, § 17; TEX. CODE CRIM. P. ANN. art. 4.07 (1966); TEX. PEN. CODE ANN. art. 1148 (1961); TEX. CODE CRIM. P. ANN. art. 37.02 (1966).

The following two states guarantee a right to trial by jury for all offenses in which a jury would be available in federal courts under the Sixth Amendment. A jury of less than twelve men is provided, however, for all but capital cases.

Florida: CONSTITUTION, Declaration of Rights §§ 11, 3, art. 5, § 22; FLA. STAT. § 913.10, § 919.10 (1965) (six jurors in all cases not capital).

Utah: CONSTITUTION, art. 1, § 12, art. 1, § 10; UTAH CODE ANN. § 78-46-5 (1953) (eight in courts

of general jurisdiction, four in courts of inferior jurisdiction).

Oregon guarantees a right to trial by jury for all offenses in which a jury would be available in federal courts under the Sixth Amendment. Ten members of the jury are permitted to render a verdict, however, in all cases except first degree murder. CONSTITUTION, art. 1, § 11; ORE. REV. STAT. 136.610 (1957).

South Carolina guarantees a right to trial by jury for all offenses in which a jury would be available in federal courts under the Sixth Amendment. However, in all but a group of the most serious crimes, a six man jury is provided. CONSTITUTION, art. 1, § 18, art. 1, § 25, art. 5, § 22; S.C. CODE § 15-618, § 15-612 (1962).

New York guarantees a right to trial by jury for all offenses in which a jury trial would be available under the Sixth Amendment in all areas outside of New York City. However, outside New York City a six man jury is provided for offenses where the maximum potential sentence does not exceed one year imprisonment. In New York City jury trials are denied where the maximum potential sentence does not exceed one year. CONSTITUTION, art. 1, § 2, art. 6, § 18; PENAL LAW § 1937 (1944); CODE CRIM. P. §§ 702, 710 (1958); N.Y.C. CRIM. CT. ACT. § 40 (1966); N.Y.C. CRIM. CT. ACT. § 31 (1963); *People v. Sanabria*, 42 Misc. 2d 464, 249 N.Y.S. 2d 66, 71 (App. Div. 1964).

APPENDIX C

SCOPE OF RIGHT TO TRIAL BY JURY IN LOUISIANA

The following constitutional and statutory provisions govern the rule to trial by jury in Louisiana:

LOUISIANA CONSTITUTION, art. 7, § 41:

> ... All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

LA. CODE CRIM. PROC. art. 779 (1967):

> A defendant charged with a misdemeanor shall be tried by the court without a jury.

LA. REV. STAT. ANN. 14:2 (Supp. 1966):

> ... (4) 'Felony' is any crime for which an offender may be sentenced to death or imprisonment at hard labor.
>
> * * *
>
> (6) 'Misdemeanor' is any crime other than a felony.

LA. CODE CRIM. PROC. art. 782 (1967):

> Cases in which the punishment may be capital shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict. Cases in which the punishment is necessarily at hard labor shall

> be trial by a jury composed of twelve jurors, nine of whom must concur to render a verdict. Cases in which the punishment may be imprisonment at hard labor, shall be tried by a jury composed of five jurors, all of whom must concur to render a verdict.

Among the offenses which are not punishable at hard labor and therefore categorized as misdemeanors for which there is no trial by jury are:

> Aggravated battery resulting from breach of the peace. LA. REV. STAT. 14:34.1 (Cum. Supp. 1962) (ten years maximum imprisonment).
>
> Indecent behavior with juveniles. LA. REV. STAT. 14:81 (Cum. Supp. 1962) (two years maximum imprisonment).
>
> Contributing to the delinquency of a juvenile. LA. REV. STAT. ANN. 14:92 (Supp. 1966) (two years maximum imprisonment).
>
> Aggravated assault. LA. REV. STAT. 14:37 (1950) (two years maximum imprisonment).

Among the offenses for which imprisonment *may* be at hard labor and are therefore triable by a jury of five are:

> Aggravated criminal damage to property. LA. REV. STAT. 14:55 (1950) (fifteen years maximum imprisonment).
>
> Aggravated battery. LA. REV. STAT. 14:34 (1950) (ten years maximum imprisonment).
>
> Forgery. LA. REV. STAT. 14:72 (1950) (ten years maximum imprisonment).

The only charges in Louisiana on which an accused is entitled to a twelve man jury whose verdict must be unanimous are murder LA. REV. STAT. 14:30 (1950), aggravated rape LA. REV. STAT. 14:42 (1950), and aggravated kidnapping LA. REV. STAT. 14:44 (1950).